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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/697,034

10/31/2003

Rodolphe Lourdel

0529-1021

1105

466

7590

08/02/2006

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EXAMINER

SWIGER III, JAMES L

ART UNIT

PAPER NUMBER

3733

DATE MAILED: 08/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/697,034	<b>Applicant(s)</b> LOURDEL ET AL.	
	<b>Examiner</b> James L. Swiger	<b>Art Unit</b> 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments filed 5/4/2006 have been fully considered but they are not persuasive.

With regards to the arguments over Biedermann et al. (US Patent 5,672,176) not having a blocking device, its is clarified with the new replacement drawing what was meant by the applicant. However, the position of the examiner has not changed, but the structure is still met by the reference. In the action the blocking device was just listed as item 20. However in light of the claim description requiring a ring a screw-threaded socket, the "blocking device" 20 may be considered at ring as it encircles the top portion of the screw. Indentations 29 also help show provide the shape as required for a "ring." Further, the threaded socket portion is considered in combination with this ring portion, and is referred to as item 45. Together these two portions form the required "blocking device" as rejected by Biedermann et al. '176.

With regards to applicant's arguments regarding the reference of Marnay et al. the examiner acknowledges that "securing" placed before "ring" was unclear. However, examiner asserts that simply "ring" would have been sufficient and viewed in combination with the Biedermann et al. '176 reference meets the claim limitations of a ring with a smooth cylindrical portion with a collar, with the diameter of the smooth portion being slightly smaller than that of the collar.

In light of the above response the following rejections still apply. Some clarity has been added.

***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Biedermann et al (U.S. Patent No. 5,672,176). Biedermann et al. discloses a device having a connector (5), a connecting rod (15), a screw having a spherical head (1) with a threaded body (2) and an external diameter greater than the spherical head (Fig. 3). Biedermann et al. further discloses a connecting element (16), vertical branches (11 and 12), a U-shaped opening (7), and a locking clip as a blocking device (20) with pressure screw (40). The Blocking device is considered the ring-like portion 20 in combination with the upper, threaded screw socket 45 to create a blocking device. The connecting element has a vertical bore (in the direction of arrow F in Fig. 1). Biedermann et al. also discloses a threaded socket (13). Biedermann et al. also discloses a device where the circular and screw-threaded portions form an internal shoulder. See Fig. 1 below.

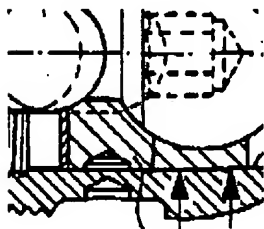


Figure 1.

The disclosed device also has an internal diameter of the bore smaller than the threaded portion.

Biedermann et al. finally discloses a cylindrical body with threaded screw external surface (46) with an internally opened bore (47) that can form a bearing surface.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biedermann et al. in view of Marnay et al. (U.S. Patent No. 5,658,285).

Biedermann et al discloses the above device except for a ring. Marnay et al. teaches a ring (20) with a collar (21). It would have been obvious to one skilled in the art at the time the invention was made to incorporate the ring of Marnay et al. into the device of Biedermann et al. to support a better closure for the screw interface.

Regarding claim 5 in view of Marnay, Biedermann et al. discloses the claimed invention except for the sizing of the dimensions of the cylindrical portion. It would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to construct the external diameter of the cylindrical portion slightly smaller than the internal diameter, so the larger external diameter can create a collar. The applicant has not disclosed that such measurements solve any stated problem or is anything more than one of numerous shapes or configurations a person ordinary skill in the art would find obvious for the purpose of providing a forming a collar on the cylindrical portion of the anchoring device. In re Dailey and Eilers, 149 USPQ 47 (1966).

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Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Biedermann et al. in view of Puno et al. (U.S. Patent No. 5,360,431). Biedermann et al. discloses the above invention except for a vertebral anchoring device with a socket having two opposite slots partially cutting the length of the cylindrical body. Also, these two separate portions are connected by a bridge to set limits on the size of the opening created by the slots. Puno et al. discloses a socket with slots (51) that is capable of keeping the two portions connected at the level of the shoulder and delimiting a maximal opening. It would have been obvious to one skilled in the art at the time the invention was made to incorporate the modifications of Puno et al. with the device of Biedermann et al. to better secure the vertebral anchoring device and to impose limits on its capabilities.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James L. Swiger whose telephone number is 571-272-5557. The examiner can normally be reached on Monday through Friday, 9:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JLS

*JS 7/26/06*

  
EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER